

# **BOARD OF LEGAL DOCUMENT PREPARERS**

**SUPREME COURT OF ARIZONA  
Conference Room CLD1, Suite 104  
Arizona State Courts Building  
1501 West Washington, Phoenix, AZ 85007**

**April 29, 2003, 10:00 a.m. – 12:38 p.m.**

## **Approved Minutes**

### **MEMBERS PRESENT:**

Judge Roland J. Steinle, III, Chair  
Mary Carlton  
Dr. Roger E. Hartley, via teleconferencing  
Margaret J. Kleinman  
Donald F. Steward

J. Ward Sturm  
Vellia M. Piña  
Susan C. Vasquez  
Carol L. Wells  
Nancy Swetnam

### **STAFF PRESENT:**

Nina Preston, AOC Legal Counsel  
Sherryn Adair, Assistant II

### **MEMBERS ABSENT:**

Virlynn Tinnell

### **OTHERS PRESENT**

Kip Anderson, on behalf of Virlynn Tinnell  
Neal R. Gordon  
Fran Johansen, Arizona State Bar Association  
Allan Merrill

## **I. CALL TO ORDER**

The first meeting of the Board of Legal Document Preparers (“Board”) was called to order by Judge Steinle at 10:03 a.m., Tuesday, April 29, 2003, in Room CLD1 of the State Courts Building.

## **II. WELCOME AND INTRODUCTIONS**

Judge Steinle began the Board meeting by introducing himself and providing a brief description of his professional experience, and each Board member did the same in turn.

## **III. BOARD PROCEDURES**

### ***Public Meeting Policy***

Ms. Swetnam explained the public meeting policy that applies to the Board. The Arizona Code of Judicial Administration; §1-202, Public Meetings, applies to the Board. The Arizona Judicial Department is not subject to the public meeting law, but §1-202 is very similar to that law. Ms.

Swetnam pointed out that, under the policy's definition section, the word "meeting" applies to meetings held in person or electronically; if a meeting is held telephonically, staff will ensure there are at least one or two board members physically present at the location in the event members of the public are available and wish to participate in the meeting. Another key definition is "legal advice" and refers to the advice rendered by counsel to the Board by AOC staff member Nina Preston. Pursuant to §1-202, Board meetings are public, but the Board may go into executive session to discuss confidential records or for advice of counsel. The Board is required to post notice of the meeting publicly which is done 48 hours prior to the meeting, and must indicate where the meeting will be held. The agenda must also be available ahead of time and must include the topics that will be covered; the meeting must adhere to the agenda, save in emergencies.

Ms. Swetnam then directed the Board's attention to the Call to the Public section of the agenda which provides the opportunity for members of the public to make comments or direct questions to the Board. She added it is at the discretion of the Chair as to whether members of the public are permitted to make comment at particular junctures in the meeting as long as the Chair also provides an additional Call to the Public at the end of the meeting.

There was additional discussion regarding the protocol for executive sessions which are used to address matters rendered confidential or privileged by statute, court rule or code, for instance, matters pertaining to a certificate holder's medical records which have been disclosed on an application. A vote of the Board members is required to enter into executive session, and during the session issues can only be discussed but not voted upon; when the executive session has concluded and public session resumes, the candidate referred to in executive session will be referred to in a generic, non-identifying manner, such as "Candidate No. 1", so as to take a particular action during public session. Ms. Swetnam emphasized formal action cannot be taken in executive session. She said meeting minutes kept would describe the issues addressed, the results of votes, the names of members of the public who address the Board, and that the minutes shall be made available 20 working days following the meeting. With regard to whether members of the public may see draft meeting minutes, Ms. Swetnam said minutes have not yet been approved by the Board are available for public viewing, and are marked as "draft"; minutes will not be posted to the Program's website until approved by the Board.

### ***Proxy Votes***

Ms. Swetnam advised the Board make decisions regarding various procedural issues, including proxy votes, quorum, and actions. The Board has two options regarding proxy votes: either a person may come to take notes and participate in the discussion but will not be entitled to make votes on behalf of the absent board member, or the proxy member may come and enter a proxy vote. Another model suggested by Ms. Carlton is giving a proxy vote to another member of the Board. After discussion on the merits of each, the Board agreed to allow a Board member to confer proxy privilege to another Board member only once per each twelve month period. Mr. Anderson noted conferring proxy would be in extraordinary circumstances as if a Board member is precluded from physically attending, it was possible to still attend telephonically. Ms. Swetnam noted in the event this particular model did not work for the Board, the Board could later vote to change this policy. Mr. Sturm asked if a proxy attendee counted toward a quorum, and Ms. Swetnam confirmed it would if the proxy attendee had the power to vote. Judge Steinle

asked the Board whether the proxies should be assigned in writing, by fax or email attachment, followed by a signed document conferring the proxy.

**A motion** was made by Ms. Swetnam and seconded by Mr. Sturm to adopt a policy to allow Board members to send designees to attend and participate in Board meetings representing the interests of the person who is unable to attend; to entitle each Board member to only one proxy assignment within a twelve (12) month period, beginning April 29, 2003, and continuing each year thereafter, with the proxy vote exercised by a fellow Board member; and to require the proxy be conferred in writing with an original, signed assignment to be filed with the Program Office. The motion carried. **LDP -03-001**

### ***Quorums***

Ms. Swetnam then raised the issue of what constitutes a quorum for the purposes of the Board.

**A motion** was made by Ms. Steward and seconded by Dr. Hartley to approve the proposal that a two-thirds majority constitutes a quorum. The motion carried. **LDP -03-002**

### ***Voting***

Ms. Swetnam asked the Board to consider how many members present would be sufficient to carry an action – a simple majority, or six members of the Board, or, if the quorum is at least two-thirds of the Board (seven members), then a majority of those present, or four members, would carry a vote. After a brief discussion, Mr. Anderson recommended a majority of the Board membership must be present to carry an action.

**A motion** was made by Mr. Steward and seconded by Ms. Carlton that voting be done by a majority of the Board membership, six people, to carry a vote. The motion carried. **LDP -03-003**

### ***Meeting Dates for Calendar Year 2003***

Ms. Swetnam explained the process for certifying applicants to the Legal Document Preparer Program, including separating applicants who are clearly qualified and those whose qualifications are less explicit. She noted files for all candidates will be available to Board members in the event particular questions arise, and program staff will be responsible for preparing the applications for Board review. The Board then turned to the issue of scheduling Board meetings to allot sufficient time to meet the July 1/03 certification deadline date, stating the most time consuming applicants would be those that are questionable, but that the anticipated volume could be addressed by holding a four-hour meeting in May and at least two four-hour meetings in June. Mr. Steward commented the Association for Independent Paralegals is holding a seminar on May 10<sup>th</sup>, and believed, depending on availability of applications at the seminar, there would be a large volume of submitted applications in time for the May Board meeting. After a group discussion, Judge Steinle outlined the agreed upon dates and times:

Tuesday, May 20 <sup>th</sup>	10:00 a.m. to 2:00 p.m. (AOC – Room 230)
Tuesday, June 10 <sup>th</sup>	10:00 a.m. to 2:00 p.m. (AOC – Room 230)
Tuesday, June 24 <sup>th</sup>	10:00 a.m. to 2:00 p.m. (AOC – Room 230)
Monday, July 28 <sup>th</sup>	10:00 a.m. to 2:00 p.m. (AOC – Room 119)
Monday, August 18 <sup>th</sup>	10:00 a.m. to 2:00 p.m. (AOC – Room 119)
Monday, September 15 <sup>th</sup>	10:00 a.m. to 12:00 p.m. (AOC – Room 230)
Monday, October 20 <sup>th</sup>	10:00 a.m. to 12:00 p.m. (AOC – Room 230)
Monday, November 17 <sup>th</sup>	10:00 a.m. to 12:00 p.m. (AOC – Room 230)
Monday, December 15 <sup>th</sup>	10:00 a.m. to 12:00 p.m. (AOC – Room 230)

Judge Steinle emphasized establishing a policy of meeting the third Monday of each month, with the above exceptions, allowed for better scheduling while avoiding major holidays. After the meeting dates had been established, Dr. Hartley excused himself from the meeting in order to fulfill his teaching responsibilities.

### ***Travel Reimbursement Policy***

Ms. Swetnam provided information on the travel reimbursement policy; explaining that any member who travels to the Board meetings is entitled to request travel reimbursement at government rate, and directed members' attention to the travel reimbursement form included in the Board materials. Ms. Swetnam also noted the scheduled Board meetings would occur over the lunch hour, but due to budget restrictions, the Court would be unable to provide lunch for participants; menus for local eateries will be provided at the beginning of each meeting to allow members to order lunch for delivery, at their expense. Members are also welcome to bring their own sack lunch.

### ***Teleconferencing***

Board members may attend meetings telephonically by dialing into the State Operator, a toll free number, whereby the caller will then be connected to the conference line established for the meeting. There is no charge to the Board member. Judge Steinle said, although there had been some discussion regarding moving meetings around to accommodate members and interested parties who reside outside of Maricopa County, holding the first several meetings at the AOC would be less cumbersome during a record review for the certification process. He noted further, however, that other locations will be considered after the initial certification process is complete, to accommodate individuals who reside in other counties,

## **IV. PROGRAM STAFFING**

Information was provided to the Board regarding staffing of the Program. An advertisement has been posted to fill the position of Program Coordinator. This position will be responsible for the program, overseeing the program, attending Board meetings, and making recommendations for action by the Board in both certification and disciplinary matters. Ms. Swetnam encouraged the Board to direct any interested persons in their acquaintance to apply. Several good candidates have applied and the interview process is underway, with the plan to fill the position shortly. Ms. Swetnam also addressed the issue of having an additional support staff person, but indicated she

would not, at this point, make a decision on hiring one, but would wait to determine the volume of incoming applications and fees. She noted other Certification and Licensing Division support staff would be available to provide support to the program on an as-needed basis.

## **V. RULE 31 AND §7-208**

Ms. Swetnam provided a brief history of the development of the Legal Document Preparer Program. She explained the practice of law is governed by Rule 31, Rules of the Supreme Court. The Court has, over time, carved out exceptions to address actions not considered as performing unauthorized practice of law. Last year, in response to a petition filed by the State Bar of Arizona to amend Rule 31, Chief Justice Jones appointed an ad hoc committee to examine the work done by legal document preparers. This led to a revised proposal, to amend Rule 31, and the development of the Arizona Code of Judicial Administration §7-208: Legal Document Preparers. Both the amended Rule 31 and §7-208 were subsequently adopted by the Supreme Court. Rule 31 now provides that a person who is certified and acting as a certified legal document preparer pursuant to §7-208 is not engaged in the unauthorized practice of law.

Ms. Swetnam explained that the process for adopting amendments to court rules and the development of §7-208 is a very public process. She explained that if in the future, the Board determines there is a need to revise or develop a particular amendment to §7-208, the process for doing so would involve developing the language for the proposed amendment, posting the language for public comment to inform affected stakeholders (i.e., legal document preparers) of the change and to give them the opportunity to comment. Next, the proposed amendment would be discussed in a series of committee meetings, including Board meetings, the Superior Court Committee, and the Arizona Judicial Council (AJC). The AJC is a policy advising board to the Supreme Court; it meets four times a year and all of the meetings are open to the public with public testimony allowed.

Ms. Swetnam explained that §7-208 was modeled after other certification programs and follows a specific format, including definitions, applicability, purpose. She explained that the purpose of certification programs is to protect the public. She led the Board members through the major provisions of §7-208, pointing out that the Board has the authority and the responsibility to make recommendations to the Supreme Court regarding rules, policies, procedures, discipline, etc., to implement the Legal Document Preparer Program.

Ms. Swetnam pointed out that §7-208 outlines the process for certification, including both initial and standard certification. The requirements for **standard** certification do not take effect until July 1, 2005. This time period was chosen to give the Board time to develop and administer the written examination required of standard certification; and for applicants to take and pass the exam. Mr. Sturm iterated his understanding that every legal document preparer who is to be certified must take the exam in 2005; Ms. Swetnam confirmed this.

It was explained that only the Board has the authority to confer or deny certification; the Program Coordinator cannot act independently on these issues. The Board must provide, in writing, the reason for denial, and the certificate holder has the right to request a hearing on the denial. These due process rights for the certificate holder are specified in §7-208.

One of the most important provisions in §7-208 is the Code of Conduct. Certified legal document preparers are required to abide by this code and disciplinary action may be taken against a certificate holder for a violation of the Code of Conduct.

Ms. Swetnam explained that the disciplinary process contained in §7-208 follows administrative law procedures closely, as well as the procedures for other certification programs administered by the AOC (for example, attorney discipline and the Court Reporter Program). There are due process rights for the certificate holder; these include that the certificate holder is entitled to receive a copy of a complaint, notice of formal action in a disciplinary procedure, and has the right to request a hearing.

Mr. Sturm asked how the fees for certification were established. Ms. Swetnam explained that the program is self-funded and estimates of costs for support, supplies, anticipated certificate holders, and other costs had been developed by the ad hoc committee; those estimates were then proposed as funding recommendations and were adopted by the Court. Ms. Swetnam explained that the fees are subject to revision, based on operational budget realities.

Ms. Anderson asked about enforcement mechanisms to address legal document preparers who do not apply for certification by July 1<sup>st</sup>. Ms. Swetnam explained that any such engagement in legal document preparation without certification could be considered the unauthorized practice of law. She also explained there is no “grace period” for certification and noted that efforts have been made, and are being continued, to notify affected persons of the new certification requirements. Ms. Carlton suggested a “banner” notice be placed on the Superior Court web site to remind LDPs that certification by July 1 is mandatory. Mr. Steward recommended notices be posted at the Superior Court’s self-service center; he then commented the penalties for not obtaining certification are, in his view, severe, as outlined in Rule 31.

Procedures were discussed regarding those Board members who will be applying for certification. When the member’s application is up for a vote, he or she must recuse themselves from the discussion and the vote.

Judge Steinle accepted public comment at this time from Mr. Rick Gordon, a public member in attendance. Mr. Gordon provided information to the Board regarding the efforts of the Arizona Association of Independent Paralegals to compile a database of legal document preparers and to notify individuals of the certification program requirements.

Ms. Piña asked whether foreign equivalency diplomas would be acceptable in lieu of a standard diploma or GED for the educational requirement for certification. Judge Steinle said that, barring translation obstacles, there was no reason why they would not be sufficient. Ms. Swetnam expressed a willingness to do research on the issue and bring that research on the matter to a Board meeting.

## VI. APPLICATION FOR CERTIFICATION

The Board reviewed the draft applications for both individual and business certification. Once approved, these forms will be available on the LDP website for download; they will also be mailed to persons who requested them in advance.

Ms. Swetnam recommended that the category of “race” be deleted from the draft application. The members agreed. Ms. Swetnam explained that the application form requires the applicant provide a physical street address; this is required in the event it is necessary to serve papers on the certificate holder in a formal disciplinary action. Home addresses, personal information such as social security number, date of birth, medical information, are all protected by court rule and are *not* public record. Mr. Anderson asked if there would be a public posting of the names of certified legal document preparers, to which Ms. Swetnam responded there would, with only the document preparer’s name and certification number posted.

Ms. Swetnam shared a written comment from Dr. Hartley that the inclusion of the question “have you ever been a legal document preparer in any other state” perhaps begs the question of the definition of “legal document preparer”. Ms. Swetnam explained the inclusion was for the purposes of questionable document preparer activity by the applicant that may have relevance in the certification process. After discussion, the Board members agreed this question should remain in the application form.

There was Board discussion regarding whether to require applicants to submit proof of educational achievement. It was noted that applicants are required to sign the application under oath, that all information contained therein is true and correct. Mr. Steward asked about verification of work experience. The Chair then allowed public comment. Mr. Alan Merrill, President of the Association of Independent Paralegals, addressed the Board. He commented that there are a number of LDPs who have been self-employed, raising the issue of what type of employment verification the Board will require. Mr. Merrill suggested a Better Business Bureau printout would be sufficient, Ms. Carlton suggested a copy of a filed Schedule C. Mr. Rick Gordon, a member of the AIP Board of Directors and the LDP ad hoc committee, addressed the Board, recommending that a sworn oath the information within the application is true and correct should be sufficient. Mr. Gordon stated there are a number of reasons a person may not be able to obtain a copy of their high school diploma, such as records destroyed by flood or fire. He believes the legal document preparer community will be self-policing and “good guys” will bring the “bad guys” to the Board’s attention. He concluded by saying in the event a complaint is lodged against a legal document preparer, requiring proof of employment or education would then be appropriate. Ms. Carlton recommended the alternative of requiring documentation at the time of application for **standard** certification, thus allowing applicants sufficient time to gather documentation.

Ms. Swetnam summarized the discussion, stating that, for **initial** certification individuals will not be required to submit transcripts or proof of education or their employment history although if an application comes in that raises questions, the Board can request additional information and verification. Submitting such documentation will be required for **standard** certification.

Mr. Steward requested the qualifications section on page 3, item C, be changed to read “providing services in preparation of legal documents under the supervision of a legal document preparer after July 1, 2003.” There was Board discussion and agreement regarding the employment history section, to request a person’s **complete** employment history, as this would give greater context to the applicant’s experience and reliability. It was further agreed this will allow the Board to evaluate what constitutes law-related experience as required for certification.

Judge Steinle asked if criminal history checks would be run on applicants. Ms. Swetnam stated that, while this was discussed in the ad hoc committee, statutory authorization is required to conduct an FBI background check and at this time, there is no such authorization. Judge Steinle suggested, and the Board members agreed, that a public records check be conducted by Program staff on each applicant.

Ms. Swetnam explained that the business application applies to those situations where a legal document preparer employs at least one other person, but that a sole practitioner who wishes to certify his or her business may do so. Articles of incorporation and a certificate of good standing are required with the business application. Ms. Vasquez recommended the business application include a space for the designations of members of the business; Ms. Swetnam noted this change. She commented that business applications listing staff will be cross-referenced with individual applications, and vice versa.

Ms. Swetnam recommended June 5, 2003, be the “due date” for certification applications. She said that incomplete applications or applications submitted after June 5<sup>th</sup> might not be certified by July 1<sup>st</sup> and would be considered at subsequent Board meetings.

**A motion** was made by Mr. Sturm and seconded by Mr. Steward to approve the timetable and both applications with the minor changes indicated above. The motion passed. **LDP - 03-004**

Ms. Swetnam introduced an example of the certificates that will be issued to certified legal document preparers. It is recommended there be a large certificate, suitable for framing, and a smaller, wallet-sized certificate. Only the wallet-sized certificate would be reissued upon annual renewal. Mr. Steward said that certified document preparers are required to post their certificate and to include their certificate number on all filed legal documents. Ms. Vasquez recommended that the authority by which legal document preparers are certified to practice be included on the certificates; Ms. Preston advised the Board that the language on the draft “pursuant to laws of this state” be changed to “pursuant to Rules of the Supreme Court.”

**A motion** was made by Mr. Sturm and seconded by Ms. Vasquez to approve the certificates with the noted changes. The motion passed. **LDP - 03-005**

## **VII. CALL TO THE PUBLIC**

Judge Steinle made a call to the public. Mr. Gordon again introduced himself to the Board and thanked the Board members for committing to the Legal Document Preparer Program. He asked about the procedure for a hearing for individuals who are denied certification. Ms. Swetnam



briefly explained the process, and it was agreed this will be an agenda item for further discussion at the next Board meeting. Mr. Gordon then asked whether individuals whose applications are pending past the July 1<sup>st</sup> deadline will be penalized for continuing to practice; Ms. Swetnam explained that the June 5<sup>th</sup> deadline allows for sufficient time for certification of all applicants. Mr. Steward stated that continuing to practice before certification is conferred is clearly a violation of 7-208. Judge Steinle stated the Board will make every possible effort to review all applications and certify eligible applicants by the July 1<sup>st</sup> deadline if and only if applications are submitted in a timely manner. Ms. Swetnam added that a list of applicants would be submitted by email to Board members in advance of the meeting so that members will be able to review the list and identify any candidates they will need to recuse from voting on.

Ms. Fran Johanson, member of the public and unauthorized practice of law specialist at the State Bar of Arizona, introduced herself and stated there will be some overlap in practice monitoring by the State Bar. She said there is a shared commitment to protecting the public. In response to a question from Mr. Sturm, it was agreed that the names of all candidates should be sent to the State Bar for review prior to a decision on the certification by the Board.

**A motion** was made by Judge Steinle and seconded by Ms. Carlton to have all applicants reviewed by the State Bar. The motion passed. **LDP - 03-006**

## **VIII. ADJOURNMENT**

Ms. Swetnam noted the next Board meeting will be held May 20, 2003 at 10:00 a.m.

**A motion** was made by Ms. Swetnam and seconded by Mr. Sturm to adjourn the meeting. The motion passed. **LDP - 03-007**

The meeting adjourned at 12:37 p.m.